

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

C. DOUG FYKE,)
)
Petitioner,)
)
vs.) CIVIL NO. 04-CV-747-GPM
)
GREGORY LAMBERT,)
)
Respondent.)

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

On March 14, 2006, this Court entered final judgment and dismissed the petition for writ of habeas corpus. (*See* Docs. 26, 27.) Petitioner filed a notice of appeal on April 17, 2006, and now moves for leave to appeal *in forma pauperis* and for a motion for a certificate of appealability (*see* Docs. 30, 31).

Pursuant to 28 U.S.C. § 2253, Petitioner may not proceed on appeal without a certificate of appealability. Section 2253(c)(2) provides that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Section 2253(c)(3) further provides that “[t]he certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).”

For the reasons set forth in the Court’s March 14, 2006, Memorandum and Order (*see* Doc. 26), Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, the motion for a certificate of appealability (Doc. 30) is **DENIED**.

Finally, “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing

that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). A plaintiff is “acting in bad faith in the more common legal meaning of the term … [when he sues] … on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit.” *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Further, “an appeal in a frivolous suit cannot be ‘in good faith’ under § 1915(a)(3), because ‘good faith’ must be viewed objectively.” *Moran v. Sondalle*, 218 F.3d 647, 650 (7th Cir. 2000). *See also Lee*, 209 F.3d at 1026; *Tolefree v. Cudahy*, 49 F.3d 1243, 1244 (7th Cir. 1995) (“[T]he granting of leave to appeal in forma pauperis from the dismissal of a *frivolous* suit is presumptively erroneous and indeed self-contradictory.”).

Although the Court has denied a certificate of appealability, the Court cannot find that the appeal from this Court’s judgment is in bad faith. The *habeas* petition was dismissed as untimely, not because it was found to be frivolous. Accordingly, the motion for leave to proceed *in forma pauperis* on appeal (Doc. 30) is **GRANTED**.

IT IS SO ORDERED.

DATED: 04/25/06

s/ G. Patrick Murphy
G. PATRICK MURPHY
Chief United States District Judge